IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.4006 OF 1994

Divisional Controller)
Maharashtra State Road Transport)
Corporation, Latur, Dist.: Latur.).. Petitioner

Versus

Baburao s/o Tukaram Shinde)
Age about 36 years, Occ.: Service)
resident of Udgir, Taluka : Udgir)
Dist.: Latur.).. Respondent

Mr.G.S.Hegde for the Petitioner.

Mr.Ashish S.Gaikwad i/b.Mr.P.N.Patil for the Respondent.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 3RD AUGUST 2004

ORAL JUDGMENT :

. This Writ Petition challenges the Order dated 30th June 1993 passed by the Labour Court, Latur in Complaint (ULP) No.78 of 1992 granting reinstatement with continuity of service and full back wages and the order dated 8th July 1994 passed by the Industrial Court, Solapur in Revision (ULP) No.61 of 1993 confirming the order of the Labour Court, Latur.

2. The Petitioner had employed the Respondent workman as a Conductor. It was found that he had misappropriated Rs.30/- by issuing reused tickets on 8th March 1992. A charge-sheet was accordingly issued to him and a after domestic inquiry being held, he was

dismissed from service with effect from 27th November 1992. Aggrieved by this order of dismissal, the Respondent workman filed a Complaint being Complaint (ULP) No.78 of 1992 under Item 1 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The Labour Court while deciding the Complaint held that the inquiry held against the workman was perverse as the spot statements recorded had been accepted by the Inquiry Officer despite the witnesses who had made such statements at the spot having turned hostile at the inquiry. The Labour Court has found that the past service record of the workman was not such as to warrant the punishment of dismissal as there was nothing brought on record to indicate that it was not unblemished. The Labour Court accordingly held that the misconduct was not proved and in any event assuming the misconduct had been proved, dismissal for a loss of Rs.30/- was shockingly harsh and disproportionate. The Labour Court, therefore, directed reinstatement with continuity of service and back wages with effect from 27th November 1992. The Industrial Court, Solapur in revision has confirmed the order of the Labour Court.

3. At the time of admission of the Writ Petition, the learned Single Judge on 3rd March 1995 issued Rule only in respect of the back wages payable to the

Respondent workman. The learned Judge while admitting the Petition has held that the view taken by the Courts below, directing the Petitioner to reinstate the Respondent workman was proper and not perverse. The learned Judge had directed the Petitioner to reinstate the Respondent workman in service forthwith. However, as regards back wages, this Court has issued Rule as prima facie the Court was of the view that the Courts below were not justified in directing payment of full back wages as the Respondent had committed a misconduct.

4. After reinstatement, it appears that the services of the Respondent workman were terminated on 12th June 2001 for a similar act of misconduct. An affidavit has been filed by one Raosaheb Shrirangrao Dhumal working with the Petitioner stating that the Respondent had committed three similar acts of misconduct after being taken back in service on 21st March 1995.

5. Mr.Hegde for the Petitioner submits that in view of the conduct of the workman after having been taken back in service as per the directions of this Court, no indulgence and leniency should be shown to the workman and the entire amount of back wages should be forfeited. He submits that the misconduct has been proved and, therefore, the Respondent workman must be punished. The

learned Advocate submits that the quantum of the amount misappropriated is not material but the Court has to take into consideration the gravity of the misconduct.

6. Having given anxious consideration to the submission of Mr.Hegde, I am unable to accept his submission that the conduct of the workman after 1995 must be considered while assessing whether he should be paid back wages as directed by the Labour Court and the Industrial Court on misconduct committed by him in 1992. The order of the Labour Court does not accept the contention of the Petitioner that the misconduct has been proved and, therefore, the Labour Court has awarded reinstatement with continuity of service and full back wages. The Industrial Court, on the other hand, has held that the findings of the Labour Court cannot be faulted. However, it is held by the Industrial Court assuming that misconduct has been committed by the Respondent workman and it has been proved that he has misappropriated Rs.30/-, the past service record do not warrant the denial of the entire back wages.

7. In my view, the workman has committed misconduct of misappropriation. This fact has also been accepted by this Court while issuing Rule. Therefore, the same punishment must be awarded to the Respondent workman. In the facts and circumstances of this case, I find that

denial of 75% back wages would be the appropriate punishment.

8. In view of this, the orders of the Labour Court, Latur and the Industrial Court, Solapur are modified to the extent that the back wages awarded are reduced by 75%. The Petitioner is liable to pay only 25% of the back wages from the date of termination of service till the Respondent workman was reinstated as per the directions of this Court.

9. Writ Petition partly allowed. Rule made absolute partly. No order as to costs.

10. Parties to act on an authenticated copy of this Judgment.